THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11740 OF 2006

DATED: 15TH JUNE, 2006.

Between

Mattaparthy Lahari Satya Ganesh &

Another. … Petitioners

And

The Govt. of A.P., rep. by its Secretary,

Revenue Department, Secretariat,

Hyderabad, and another. .. Respondents

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WRIT PETITION NO.11740 OF 2006

ORDER :

The petitioners, being minors, represented by their father and guardian, Mattaparthy Nagabhushana Rao, filed this writ petition seeking a declaration that the order passed by the 3rd respondent dated 24-5-2006 is arbitrary and illegal.

The affidavit filed in support of the writ petition was sworn to by the father of the petitioners M. Nagabhushana Rao stating that he belongs to Setty Balija community which is a Backward Class Group-B. It is also stated that he originally belonged to East Godavari District, hailing from Tottramudi of Aianavalli Mandal and that at present he is working as a Fitter in Ordnance Factory, Yeddumylaram, Medak District. The petitioner states that he made an application before the 3rd respondent requesting for issue of community certificates for his two children i.e., the writ petitioners. In pursuance thereof, the 3rd respondent passed two separate but identical orders dated 24-5-2006 as under :

> *"Kum. Mattaparthy Usha Sree, D/o. Nagabhushan Rao, Q.No.22532, Type-II, Estate Eddumailaram is informed that as per Computer APTS Manual OC caste certificate (Setti Balija) does not arise.*
>
> *However, she is advised to obtain such caste certificate from their native Mandal of East Godavari District."*

The said orders are under challenge in this writ petition.

I have heard the learned Counsel for the petitioners and the learned Government Pleader appearing for the respondents.

The petitioners contended that as per Government Memo dated 2-11-1992 it was made clear that Setti Balija community of Visakhapatnam, East Godavari, West Godavari and Krishna Districts shall be included in the Backward class under Group-B and that the Revenue authorities have to issue Setti Balija community certificate after verification with their counterparts in other districts and after satisfying themselves that the person belongs to Setti Balija community and had migrated from Visakhapatnam, East Godavari, West Godavari and Krishna districts. It is pointed out that on 18-1-1988 the Mandal Revenue Officer, Aianavalli Mandal issued a caste certificate declaring that the father of the petitioners Mattaparthy Nagabhushana Rao belongs to Setti Balija community BC-B group and therefore there is absolutely no reason to reject their request to issue similar community certificates to them. A copy of the certificate dated 18-1-1988 issued by the Mandal Revenue Officer, Aianavalli Mandal has also been placed before this Court.

The learned Counsel for the petitioners while contending that the impugned action of the 3rd respondent is arbitrary and illegal further submitted that in identical circumstances the 3rd respondent issued a community certificate to one A. Lakshmi Prasanna, D/o. A. Prabhakar declaring that she belongs to Setti Balija caste BC-B group.

The learned Government Pleader for Social Welfare at the outset raised an objection as to the maintainability of the writ petition contending that since the impugned order, is an appealable order under Section 7 of The Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 (for short, ‘the Act’), without exhausting the said alternative remedy, the petitioners cannot maintain this writ petition.

There can be no dispute when the alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

However, it needs no reiteration that the rule of exclusion of the writ jurisdiction on the ground of availability of alternative remedy is only a self-imposed restriction by the Constitutional Courts while exercising the discretionary jurisdiction under Article 226 of the Constitution of India. Though the cases where the impugned order was found to be wholly without jurisdiction or where it was vitiated on account of violation of principles of natural justice or where vires of the Act is challenged are found to be some of the exceptions for exercising the extraordinary jurisdiction under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy, the law is well settled that the said exceptions are not exhaustive and exercise of the discretion of the Court under Article 226 of the Constitution of India depends on a variety of individual facts.

In the case on hand, a bare perusal of the orders impugned shows that the same were passed mechanically without application of mind to the relevant factors. The observations made by the respondent that the petitioners may obtain the certificates from their native Mandal of East Godavari District is also absolutely unwarranted and contrary to the Government Orders. In the circumstances, it would not be appropriate to drive the petitioners to invoke the statutory remedy of appeal since the original authority failed to advert to the essential aspects while exercising the powers conferred on him under the Act. Hence, I am of the opinion that notwithstanding the availability of the alternative remedy of appeal, this is a fit case where the indulgence of this Court under Article 226 of the Constitution of India is warranted.

Accordingly, the impugned orders, dated 24-5-2006 are set aside and the Writ Petition is disposed of granting liberty to the petitioners to make appropriate application afresh in the form prescribed under the Rules made under the Act enclosing all the relevant material to substantiate their claim that they belong to Backward class. If any such application is made within a period of two weeks from

today, the 3rd respondent shall consider the same and after making necessary enquiry following due process of law, pass appropriate orders in accordance with law within a period of six weeks thereafter.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 15-6-2006

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